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In The  
**Supreme Court of the United States**

October Term, 1991

STEPHANIE NORDLINGER, an individual,

*Petitioner,*

v.

KENNETH HAHN, in his capacity as Tax Assessor  
for the County of Los Angeles,  
and the COUNTY OF LOS ANGELES,

*Respondents.*

On Writ of Certiorari  
to the Court of Appeal of California

AMICUS CURIAE BRIEF OF HOWARD JARVIS  
TAXPAYERS ASSOCIATION, PAUL GANN'S  
CITIZENS COMMITTEE, AND PACIFIC  
LEGAL FOUNDATION IN SUPPORT OF  
RESPONDENTS KENNETH HAHN, ASSESSOR  
FOR THE COUNTY OF LOS ANGELES,  
AND THE COUNTY OF LOS ANGELES

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No. 90-1912

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## IDENTITY AND INTERESTS OF AMICI

Pursuant to Supreme Court Rule 37, Howard Jarvis Taxpayers Association (HJTA), Paul Gann's Citizens Committee (PGCC), and Pacific Legal Foundation (PLF) respectfully submit this brief amicus curiae in support of respondents Kenneth Hahn and the County of Los Angeles. Written consent to the filing of this brief has

been granted by counsel for all parties. Copies of the letters of consent have been lodged with the clerk of this Court.

Howard Jarvis Taxpayers Association is a nonprofit, tax-exempt California corporation. It was organized in 1978 by the late Howard Jarvis, a coauthor of Proposition 13.<sup>1</sup> Under its former name of California Tax Reduction Movement, HJTA was organized for the express purpose of defending the tax reduction benefits of Article XIII A of the California Constitution. HJTA has over 250,000 members who actively support its ongoing tax reduction efforts.

Paul Gann's Citizens Committee is an incorporated organization which seeks to advance the interests of taxpayers. It was founded by the family of the late Paul Gann who, along with Howard Jarvis, coauthored Article XIII A. It was created to continue the work of Paul Gann who sponsored several statewide ballot measures seeking to protect and expand Article XIII A.

Pacific Legal Foundation is a nonprofit, tax-exempt corporation which exists for the purpose of engaging in litigation regarding matters affecting individual freedoms as well as economic and property rights. Founded in 1973, PLF has grown to be the largest public interest law firm in the country that is dedicated to the protection of the free enterprise system and limited government intervention. PLF now has over 20,000 contributors and supporters, many of whom are California property owners

<sup>1</sup> Proposition 13 added Article XIII A to the California Constitution and will be referred to throughout as Article XIII A.

who will be directly and immediately affected by any alteration in Article XIII A. PLF maintains its principal office in Sacramento, California. Authorization for PLF to become involved in a case is given by a Board of Trustees which is comprised of attorneys and businesspersons throughout the country. The Board evaluates the merits of any contemplated legal action and authorizes PLF participation only when the Board perceives broad public support for its position.

PLF's public policy perspective and litigation experience in the areas of limited government intervention in general and, in the defense of Article XIII A in specific, will help provide this Court with additional argument in resolving the important questions of law herein presented. In fact, PLF is thoroughly familiar with the issues presented in this litigation, having participated as amicus along with HJTA and PGCC in this case before the California Court of Appeal in the proceedings below.

Amici also filed a brief amicus curiae in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336 (1989), the case upon which petitioner's claim is founded, seeking to ensure that any decision in that case did not materially affect the validity of Article XIII A. In *Allegheny Pittsburgh*, this Court expressly stated that its decision did not address the validity of Article XIII A. *Id.* at 344 n.4. Nevertheless, in the wake of *Allegheny Pittsburgh*, three separate actions were filed in California courts seeking invalidation of Article XIII A based on that decision.

### OPINION BELOW

The opinion of the California Court of Appeal is reported at *Nordlinger v. Lynch*, 225 Cal. App. 3d 1259 (1990).

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### STATEMENT OF THE CASE

Petitioner filed this action in the Los Angeles County Superior Court on September 18, 1989, against the County of Los Angeles and the county assessor (then John J. Lynch). The trial court sustained respondents' demurrer without leave to amend and judgment was entered against petitioner. The judgment was upheld by the California Court of Appeal for the Second Appellate District in a published decision. Petitioner's Petition for Review to the California Supreme Court was denied on February 28, 1991.

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### STATEMENT OF FACTS

Petitioner is a resident of the City of Los Angeles who purchased her home in 1988 for \$170,000. Upon purchase, her house was reassessed to its acquisition value as allowed by Article XIII A. Under the terms of Article XIII A, petitioner's maximum annual property tax will be 1% of the property's acquisition value.<sup>2</sup> In addition, future increases in the taxable value of petitioner's

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<sup>2</sup> The 1% may be exceeded only for voter-approved indebtedness. Cal. Const. Art. XIII A, § 1(b).

property will be limited to 2% per annum. There is no dispute that petitioner's tax liability is based on the price she voluntarily paid for her home or that she was fully aware of the tax consequences of her purchase.

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### SUMMARY OF ARGUMENT

Article XIII A of the California Constitution was enacted to advance the specific policies of tax limitation, prevention of taxation on paper gains in the value of property, certainty in future property tax liability, and provision of a stable revenue source for local governments. More than 12 years of experience have demonstrated that Article XIII A has indeed advanced its intended policies.

Because Article XIII A advances legitimate policies, it does not violate the Equal Protection Clause of the United States Constitution. Decisions from this Court firmly establish that states have broad discretion in fashioning tax laws as long as such laws are not palpably arbitrary and advance legitimate policies.

In point of fact, so important are the policies behind Article XIII A, and so clear is the relationship between Article XIII A's various provisions and the furtherance of those policies, amici will demonstrate that Article XIII A meets the burden of any "intermediate" level of scrutiny which this Court may wish to employ.

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## ARGUMENT

This suit challenges California's constitutionally mandated ad valorem "acquisition value" property taxation system. A ruling by this Court that property tax systems based on acquisition value violate the constitutional guarantees of equal protection would not only upset the specific policy choice of this state's voters, but would also bring chaos to California's entire property tax system.<sup>3</sup> While petitioner and her supportive amici are overflowing with declarations and conclusions regarding "discrepancies" and "inequities," amici herein file this brief in order to demonstrate how Article XIII A is able to withstand genuine analysis of its methods and policies and to urge this Court to uphold the constitutionality of this landmark initiative.

### I

#### THE DELIBERATE POLICY CHOICES REFLECTED BY ARTICLE XIII A FAR EXCEED THE MINIMUM EQUAL PROTECTION REQUIREMENT OF "RATIONAL BASIS"

For petitioner to prevail, she must demonstrate that there exists no rational basis for Article XIII A's method of taxing property. Since this is an impossible showing as a matter of law, the decision of the California Court of Appeal should be affirmed. Amici will demonstrate that not only does Article XIII A have a rational basis, its

<sup>3</sup> See generally Brief of Amicus Curiae California Assessors' Association (describing the impact of invalidating Article XIII A on members of the association as "comparable to rebuilding an engine while it is running") at 2.

provisions have worked precisely as intended to further the legitimate goals of tax limitation and revenue stability that voters in 1978 considered important enough to protect by constitutional amendment. It is not amici's intention to overstate their case, however, the clear relationship between Article XIII A's various provisions and the important policies they purport to advance demonstrates that Article XIII A more than surpasses the minimum equal protection requirement of "rational basis."

#### A. Article XIII A Advances the Policies of Tax Limitation, Tax Certainty, Limitation of Taxation on Paper Gains in the Value of Property, and Stable Revenue Sources

Simply stated, Article XIII A uses acquisition value, not current market value, as a basis of taxing property. The acquisition value system treats all taxpayers exactly alike. Their taxes are based on what they were willing to pay for their homes. In a real estate market with rapidly increasing values, Article XIII A generally favors those who have owned their property for a longer period of time. From this, petitioner argues that Article XIII A constitutes an ipso facto violation of equal protection. Brief for petitioner at 18.

This argument is little more than a conclusion, devoid of any equal protection analysis. Article XIII A conforms to the Equal Protection Clause for the simple reason that it is supported by very specific policies which are furthered by its operation. The existence of those policies—policies which were articulated prior to Article



XIIIA's enactment—distinguishes this case from the situation found unconstitutional in *Allegheny Pittsburgh*.

Article XIII A is the only property tax system in the country which protects property owners from being taxed on the paper gains in the value of their property and which provides certainty in future property tax liability, while at the same time providing ever-increasing property tax revenues to local governments. This did not happen by accident. Article XIII A was well thought out and continues to work today precisely as the drafters—and voters—intended back in 1978.

Article XIII A is not made up of disparate, unrelated provisions. Rather, it "consists of four major elements, a real property tax rate limitation (§ 1), a real property assessment limitation (§ 2), a restriction on state taxes (§ 3), and a restriction on local taxes (§ 4)." *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 231 (1978) (emphasis in original). Each of these provisions is "interrelated and interdependent, forming an interlocking 'package' . . . to assure effective real property tax relief." *Id.* Petitioner's suggestion that Article XIII A can be partially dismantled and still remain effective (brief for petitioner at 2, Footnote 1) ignores the fact that Article XIII A's provisions are interrelated to accomplish its intended goals. To remove any one of Article XIII A's provisions would seriously erode the protections it was designed to provide.

Article XIII A provides substantial property tax protection for Californians in two ways. First, it establishes a maximum 1% rate of tax on "full cash value." Cal. Const.

Art. XIII A, § 1(a). Under this provision, the highest property tax which can be levied initially on a house with a purchase price of \$100,000, exclusive of voter approved indebtedness, is \$1,000. Second, and more importantly for the purposes of this lawsuit, Article XIII A defines the term "full cash value" as that value which is designated on the 1975-76 tax roll, with reassessments to reflect the new acquisition value when the property changes ownership, with annual increases limited to no more than 2% of the taxable value. Cal. Const. Art. XIII A, § 2. For example, even if a \$100,000 house increases in market value by 10% in one year to \$110,000, its *taxable value* for the following year cannot exceed \$102,000. The purposes of Section 2 are clear. It prevents property owners from being taxed on the mere paper gains in the value of their property and provides certainty in property tax liability.

The reason for allowing reassessment upon change of ownership should be obvious. If all parcels of privately owned property were taxed at 1% of the "full cash value" (starting with the 1975-76 tax year), limited to only 2% increases annually and without reassessment upon change of ownership, the total amount of property tax revenues coming into local governments in California would continually decrease in terms of real dollars. This is because inflation has significantly outpaced the modest Article XIII A growth factor since its adoption. Tax Foundation, *Facts and Figures on Government Finance* at 47 (1990 ed.).

It should not be surprising, therefore, that because of the reassessment provision and the rapid increase in real estate values, the increases in property tax revenues

coming into local governments have *exceeded* inflation.<sup>4</sup> Thus, the property tax relief provisions of Article XIII A are only half the equation. The reassessment upon change of ownership provision is an integral part of Article XIII A's operation which advances the policy of providing a stable revenue source for local governments. This policy was expressly recognized in a recent California court decision. *R. H. Macy & Co. v. Contra Costa County*, 226 Cal. App. 3d 352, 360 n.2 (1990), *cert. granted*, \_\_\_ U.S. \_\_\_, 114 L. Ed. 2d 708, *cert. dismissed*, \_\_\_ U.S. \_\_\_, 115 L. Ed. 2d 1045 (1991).

Article XIII A is a departure from the traditional "current market value" systems of property taxation. It was meant to be. "Current market value" systems do not reflect the careful balance between the needs of property owners and the needs of government. A system which is equal in its onerous and unpredictable treatment of property owners cannot be considered any more "rational" an alternative than the one of which the petitioner complains.

**B. Article XIII A Does Not Violate the Equal Protection Clause of the United States Constitution**

Petitioner contends that a state which does not tax property based on current market value violates the

<sup>4</sup> For example, in tax years 1987-88 to 1988-89 the growth for county assessed property (including the homeowners' exemption but not including other exemptions) increased 9.7% to \$1.2 trillion. *State Board of Equalization 1988-89 Annual Report* at 23.

Equal Protection Clause of the United States Constitution. This contention is without merit.

**1. States Have Broad Discretion to Advance the Policies of Their Choice in the Taxation of Property**

A state's disparate treatment of taxpayers does not violate the principle of equal protection as long as the classification is founded on a legitimate state policy which is advanced by the classification. *Kahn v. Shevin*, 416 U.S. 351, 355 (1974). In *Kahn*, this Court addressed the constitutionality of a Florida property tax exemption for widows only. A widower challenged this distinction on equal protection grounds. *Id.* at 352. This Court first observed that

"[a] state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal Constitution. . . . This principle has weathered nearly a century of Supreme Court adjudication." *Id.* at 355 (brackets in original; citations omitted; footnote omitted).

This Court then concluded that the different treatment of widows and widowers " 'rest[ed] upon some ground of difference having a fair and substantial relation to the object of legislation.' " *Id.* at 355 (citations omitted).

This Court's deference to the states on matters of tax policy can be traced back at least as far as *Bell's Gap Railroad Co. v. Commonwealth of Pennsylvania*, 134 U.S. 232

(1890). There the Court concluded that "the XIVth Amendment was not intended to compel the States to adopt an iron rule of equal taxation." *Id.* at 237. The states may adopt distinctions between parcels of property of similar value, "so long as [such laws] proceed within reasonable limits and general usage, [and] are within the discretion of the State Legislature, or the people of the State in framing their Constitution." *Id.* at 237. *Bell's Gap Railroad Company* is persuasive because there, as here, the plaintiff contended that deviation from current market value violated the Equal Protection Clause.<sup>5</sup>

Since *Bell's Gap*, this Court has repeated the rule that "the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973); see, e.g., *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 88 (1940) ("in taxation, even more than in other fields, legislatures possess the greatest freedom in classification" (footnote omitted)); and *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 526 (1959) ("the States have the attribute of sovereign

<sup>5</sup> The exceptional deference shown to the states in tax matters does not necessarily extend to other kinds of economic legislation. Indeed, in the area of "takings" under the Fifth Amendment, higher standards of review are often applied. "[A] use restriction may constitute a 'taking' if not reasonably necessary to the effectuation of a substantial governmental purpose." *Nollan v. California Coastal Commission*, 483 U.S. 825, 834 (1987) (brackets in original; emphasis added) (citing *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 127 (1978)). Indeed, in *Nollan* this Court stated that its "opinions do not establish that these standards are the same as those applied to due process or equal protection." *Id.* at 834 n.3.

powers in devising their fiscal systems to ensure revenue and foster their local interest"). As recently noted by a tax scholar,

"the [United States Supreme] Court has been exceedingly deferential for the last half century. Prior to that, one finds a handful of cases, perhaps as few as four in the entire history of the Court, holding that an assessment practice violated rational basis equal protection. These rare decisions are poorly reasoned." Glennon, *Taxation and Equal Protection*, 58 Geo. Wash. L. Rev. 261, 263 (1990).

Based on the more recent cases from this Court (*Kahn*, *Allied Stores*, etc.), the California Supreme Court rejected an equal protection challenge to Article XIII A shortly after it was enacted. The basis for its ruling was that Proposition 13 was logically related to its intended goals. The court stated:

"[The] 'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach." *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d at 235 (emphasis added).

## 2. Article XIII A's Acquisition Value System Based on Original Purchase Price Is Crucial to Its Legitimate Objectives

Prior to the enactment of Article XIII A, the operation of the traditional current market value system in



California simply was not working. California's exceptionally volatile real estate market had literally taxed many families out of their homes. The drafters of Article XIII A faced a choice between two extremes: (1) continue current market value assessment of all properties or (2) hold assessments of all properties at the market value as of some date certain (e.g., 1974-75).

Choice (1) does not provide either the certainty or the predictability the proponents of Article XIII A sought to achieve. Even with the maximum rate set at 1% of current market value, owners would still have the taxable value of their property determined by a wildly fluctuating real estate market. Inflation or unpredictable increases in the demand for property could drive up market values, with a corresponding increase in property taxes, independently of the owner's ability to pay those taxes. Continuing the current market value system would, however, ensure a revenue stream to the tax levying governments fully responsive to changing market values.

To be sure, choice (2) would have led to full predictability of future property taxes, however, it would also have provided a stream of property tax revenues guaranteed to decrease in terms of real dollars, potentially crippling local services.

The Article XIII A drafters rejected those two unacceptable extremes and inserted a provision that provided the stable revenues offered by the current market value system, as well as the certainty and predictability offered by holding the market value as of some date certain. Article XIII A would allow for the resetting of the assessed value of property at its market value whenever the property was sold. Thus, the new owner is able to

predict the future burden of property taxes regardless of the vicissitudes of the market, and local governments are assured of a system of generating revenue which continues to respond to increased property values and inflation.

The "cost" of this "acquisition value" system is the creation of the *appearance* of tax "inequity"—that is, owners of otherwise identical properties could be paying very different property taxes during any given year. This difference is offset by the effect that any difference in tax liability has on the value of the property when purchased. In considering the net benefits of ownership prior to purchasing, a prospective buyer will be willing to pay more for property subject to a low rate of property taxation and will demand a lower price if the property is subject to high property taxes. Thus, the economic burden created by property taxes is borne by both the buyer and the seller of real estate.

Further, under Article XIII A, the taxable value of every piece of property, regardless of when it was purchased, declines relative to the then current market value of the property as the years pass. All property owners are treated equally in the sense that 100% of a property's market value is used to calculate their initial tax liability and, as inflation increases the value of their property at a rate that exceeds the 2% rate provided by Article XIII A, their assessments grow smaller and smaller relative to the then current market value. Any tax "disadvantage" a new owner initially appears to have relative to his or her neighbor is greatly diluted as the difference between the new owner's assessed value and current market value increases.



The *appearance* of tax inequity in any given year arises, not because the tax burden differs depending upon date of purchase (it does not—all are taxed at 1% of acquisition value), but because the value of the separate properties are different at the time the tax is imposed. Basing property taxes upon the property's acquisition value is an essential element of, and is directly related to, Article XIII A's legitimate interest in eliminating tax liability on unrealized paper gains in the value of the property. To claim that such a practice is "irrational" (brief for petitioner at 12) is to ignore the legitimate state interests that are advanced by a challenged piece of legislation.

3. **Allegheny Pittsburgh Does Not Control This Case Because There Was No Deliberate Policy Choice Being Advanced by the "Aberrational Enforcement Policy" of a Single County Assessor**

In her contention that Article XIII A violates the federal Equal Protection Clause, petitioner relies heavily (if not exclusively) on this Court's decision in *Allegheny Pittsburgh*, 488 U.S. 336. Brief for petitioner at 14. Petitioner's reliance on this decision is misplaced for two fundamental reasons.

First, it is difficult to understand petitioner's singular reliance on a case which went out of its way to say it did not apply to the legal challenge which petitioner now brings. This Court in *Allegheny Pittsburgh* expressly stated:

"We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the

law of a State; generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as 'Proposition 13.' Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred or constructed upon, or in a limited manner for inflation. Cal Const, Art XIII A, § 2 (limiting inflation adjustments to 2% per year). The system is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." *Id.* at 344 n.4.

In the quote above, this Court simply said that it was not considering a case where the classification between taxpayers was advancing a state policy.

The second reason *Allegheny Pittsburgh* does not apply to Article XIII A is suggested by the distinction drawn by this Court itself in the same footnote. Specifically, this Court seemed to have little trouble distinguishing between "the law of a State, generally applied" and the "aberrational enforcement policy" of a single county assessor. The distinction is crucial. The very first sentence of this Court's decision in *Allegheny Pittsburgh* identifies West Virginia as having a current market value system of property taxation. *Id.* at 338. Thus, the assessment practice deemed unconstitutional in West Virginia not only bore no rational relationship to any legitimate state policy, it was in direct conflict with West Virginia's constitutionally mandated current market value system of property taxation. On the other hand, California has clearly articulated the policies it seeks to advance with its

property tax system and has deliberately chosen Article XIII A as the best way to effectuate those policies.<sup>6</sup>

Petitioner's reliance on *Allegheny Pittsburgh* highlights her failure to apply any measure of equal protection analysis to Article XIII A. It is the relationship between the articulated policies underlying a piece of legislation and the means employed to advance those policies that is the sine qua non of equal protection analysis. By merely claiming that Article XIII A's assessment policies are "irrational" (brief for petitioner at 12), petitioner completely fails to address the legitimate interests and purposes that are advanced by Article XIII A and reduces "rational basis" scrutiny to a "nontest" that provides absolutely no guidance in determining whether a law violates the Equal Protection Clause. Because California has chosen to pursue different tax policies than West Virginia, and has also chosen to implement those policies through different methods of property taxation, this Court's decision in *Allegheny Pittsburgh* does not provide an ounce of support for petitioner's argument.

<sup>6</sup> The California Supreme Court itself in *Amador Valley* recognized that equal protection cases involving jurisdictions which require taxation on current market value are meaningless:

"[Such] cases . . . involve[] constitutional or statutory provisions which *mandated* the taxation of property on a *current value* basis. These cases do not purport to confine the states to a current value system under equal protection principles or to state an exception to the general rule accepted both by the United States Supreme Court and by us . . . that a tax classification or disparity of tax treatment will be sustained so long as it is founded upon some reasonable distinction or rational basis." *Id.* at 235 (emphasis in original).

**4. The Deliberate Policy Choices Embodied in Article XIII A Are Evident Both from the Text of the California Constitution Itself and from the Ballot Pamphlet Accompanying Article XIII A**

With Article XIII A, one need not conjure up a state of facts to justify its treatment of property owners. The policies are abundantly evident from the text of the constitution itself.

The very first sentence of Article XIII A reveals that tax limitation is its primary purpose: "The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property." Section 1(a). Likewise, protection against being taxed on paper increases in the value of property is clearly expressed in Section 3(b): "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent." Finally, Article XIII A makes clear that property will be reassessed to the new acquisition value when "purchased, newly constructed, or a change in ownership has occurred," thus providing local governments with a stable source of revenue. Section 2(a). Article XIII A is straightforward and direct in its operation. A simple reading of its few provisions reveals its policies.

The ballot pamphlet accompanying Article XIII A further articulates these policies and removes all doubt as to whether the voters knew what they were getting.<sup>7</sup> The voters were made *specifically* aware of the fact that similar properties could be taxed at differing amounts depending on the time of purchase. The independent analysis by the California Legislative Analyst which immediately precedes the text of the measure itself states that "[a]s a result [of the reassessment upon change of ownership provision], two identical properties with the same market value could have different assessed values for tax purposes if one of them has been sold since March 1, 1975." California Ballot Pamphlet, June, 1978, Primary Election at 57. Likewise, in the Rebuttal to Arguments in Favor of Article XIII A, the opponents unequivocally stated that Article XIII A "PLACES a disproportionate and unfair tax burden on anyone purchasing a home after July 1, 1978." *Id.* at 58. Finally, in the argument against Article XIII A, the opponents bluntly stated that "[h]omeowners living

<sup>7</sup> The ballot pamphlet accompanying Proposition 13 may properly be analyzed to determine the measure's purposes and policies. In *City of Cathedral City v. County of Riverside*, 163 Cal. App. 3d 960, 964 n.4 (1985), the court noted that "[t]he California Supreme Court has relied heavily on the voters' pamphlet to determine the voters' intent in interpreting Proposition 13." See also *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 231; *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 55-56 (1982). The limited federal law regarding reliance on ballot arguments is in accord. See, e.g., *Gutierrez v. Municipal Court of the Southeast Judicial District*, 838 F.2d 1031 (9th Cir. 1988). "Where a measure is enacted by the voters rather than the legislature, the ballot materials are recognized as important guides for determining legislative intent." *Id.* at 1044 n.17.

in identical side-by-side houses will pay vastly different property tax bills." *Id.* at 59.

Whether one looks at the text of Article XIII A or the ballot pamphlet, it is obvious that the citizens of California knew that the system they were voluntarily imposing on themselves would result in properties of similar current market values being taxed at different amounts. With full knowledge of this fact, the voters overwhelmingly adopted Article XIII A. They did so because any "inequities," to the extent they exist at all, are more than offset by the benefits of Article XIII A.

That voters knew what they were getting at the time Article XIII A was enacted is relevant in light of the petitioner's contention that the California Supreme Court's decision in *Amador*, upholding the constitutionality of Article XIII A, is somehow inapplicable because it was rendered "long before the disparities of the past thirteen years had developed." Brief for petitioner at 9 and 31, Footnote 18. This "if only they had known" argument fails completely for the simple reason that voters *did* know what the results of Article XIII A would be over time.

In terms of equal protection analysis, the policies underlying Article XIII A have been very well articulated and the voters who enacted it were aware of both the methods of achieving those policies as well as the future ramifications of those methods. Thus, a declaration that the system chosen by nearly 65%<sup>8</sup> of the voters in California is "irrational" would require a level of scrutiny

<sup>8</sup> According to the June 6, 1978, Statement of Votes, California State Archives, there were 4,280,689 (64.8%) votes for Proposition 13, and 2,326,167 (35.2%) votes against Proposition 13.



that totally eclipses anything ever considered to be within the "rational basis" standard previously applied to this type of legislation.

Petitioner also attempts to characterize Article XIII A as a method whereby "privileged 'castes'" are able to hold their property in order to retain artificially low property taxes "indefinitely into the future" at the expense of new property owners. Brief for petitioner at 21. This can likewise be seen as the fiction it is by considering the fact that California still has a faster property turnover rate than the national average.<sup>9</sup> This means that the average home in existence at the time Article XIII A was enacted has already changed hands at least once.

The fact is, Article XIII A has *not* resulted in all or even most of the pre-Article XIII A property owners holding onto their property in order to saddle new owners with the costs of governmental services.

## II

### ARTICLE XIII A IS CONSTITUTIONAL UNDER A LEVEL OF SCRUTINY THAT REQUIRES MORE THAN A MERE RATIONAL RELATIONSHIP TO A CONCEIVABLE STATE INTEREST

Since *United States v. Carolene Products*, 304 U.S. 144 (1938), courts have required legislation affecting

<sup>9</sup> In 1989, California's home sales market had a turnover rate of 8.4 years while the national market turned over at a rate of every 12 years. John Pfister, *Turnover Rate Worsened in 1990; Should Hold Steady for '91*, THE GUARANTOR, Sept./Oct. 1991, at 4-5.

individual liberties to be substantially related to a compelling state interest (*Loving v. Virginia*, 388 U.S. 1 (1967); *Shapiro v. Thompson*, 394 U.S. 618 (1969)), while requiring legislation affecting economic or property rights only to be rationally related to a conceivable state interest (*McGowan v. Maryland*, 366 U.S. 420 (1961); *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983); *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), but see *Nollan v. California Coastal Commission*, 483 U.S. 825 (requiring that a regulation which conditions the issuance of a building permit upon the granting of an easement to the public "substantially advance" the state interest)). *Id.* at 841.

While Article XIII A has thus far been subject only to the deferential "rational basis" standard of review (see *Nordlinger v. Lynch*, 225 Cal. App. 3d at 1272), petitioner has asked this Court to raise the level of scrutiny based on Article XIII A's alleged impact on the fundamental right to travel. Brief for petitioner at 39. Although amici contend that such a contention is meritless, should the Court determine that the *property* and *economic* interests involved herein are of a sufficiently fundamental nature so as to warrant a higher, "intermediate" level of scrutiny, amici will demonstrate how Article XIII A meets any such heightened level of scrutiny.

#### A. This Court Has Applied a Heightened Level of Scrutiny to Economic Legislation

As this Court's views of how economic legislation might impact rights which are to some degree "fundamental," have evolved, it has raised the level of scrutiny



applied to various classifications by requiring the interests served to be "important" (*Reed v. Reed*, 404 U.S. 71 (1971)), requiring that the legislation be "substantially related to the achievement" of its objectives (*Craig v. Boren*, 429 U.S. 190 (1976)), approaching the challenged law from the perspective of the disadvantaged group, as opposed to a neutral perspective, or that of the Legislature (*City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985)), or by refusing to allow post hoc justifications for a challenged law or ones that were not advanced during the trial below (see generally Gunther, *The Supreme Court, 1971 Term-Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for Newer Equal Protection*, 86 HARV. L. REV. 1 (1972)). One suggested method of raising scrutiny is to limit acceptable rationalizations for a rule to those which were actually in mind when the rule was adopted. See *Shweiker v. Wilson*, 450 U.S. 221 (1981) (Powell, J., dissenting, joined by Brennan, Marshall & Stevens, JJ.); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166 (1980) (Brennan, J., dissenting, joined by Marshall, J.).

This brief does not solicit the raising of the level of scrutiny applied to Article XIII A; however, should this Court determine that a level of scrutiny should be applied which requires more than a rational relationship to a conceivable state interest, Article XIII A should, for the reasons set forth below, yet be upheld.

**B. Equal Protection Analysis  
Requires an Analysis of Both  
the Purposes of the Challenged  
Legislation as Well as the Means  
Chosen to Achieve Those Purposes**

The two focal points of modern equal protection analysis have always been (1) the purposes and policies which the challenged legislation purports to advance and (2) the means employed by the legislation of advancing those policies.

**1. The Interests Served by Article  
XIII A's Acquisition Basis  
Are Not Merely "Legitimate,"  
but Are "Important"**

Prior to the enactment of Article XIII A, California's volatile real estate market, in combination with the "current market value" system of property taxation, created situations where homeowners, many of whom were on fixed or limited incomes, were literally being taxed out of their homes. See Oates, *Capitalization Session: A Discussion*, 32 NAT'L TAX J. 111 (Supp. June 1979). In order to avoid this situation, yet still provide local governments with essential revenue, Article XIII A was drafted with the specific purposes of limiting taxes and providing a stable source of revenue firmly in mind.

The state's interest in devising a tax system that avoids circumstances whereby homeowners are forced to sell their property because they were unable to anticipate the impact of inflation on their tax bill must be recognized as much more than a mere "legitimate" interest.

**2. The Provisions of Article XIII A  
Are Not Only Rationally  
Related to Its Articulated  
Purposes, but Are Substantially  
Related to Those Purposes**

The disparity in taxes which the petitioner complains of were not unanticipated, nor are they the result of either sloppy drafting or of abuses within the system. On the contrary, Article XIII A is working precisely as the drafters of Proposition 13 had expected in 1978.

The 1% cap on the percentage of the property's acquisition value that can be taxed (Cal. Const. Art. XIII A, § 1(a)), along with the limitation on increases in taxable value to no more than 2% annually (Cal. Const. Art. XIII A, § 2), are *directly* related to the goal of providing property tax relief to California property owners. Indeed, in the first year after Article XIII A became operative, property taxes in California were reduced by \$7 billion.<sup>10</sup>

However, if these were the only two provisions of Article XIII A, local governments would have gone bankrupt long ago. Therefore, Article XIII A, Section 2, provides that property shall be reassessed to reflect the new acquisition value when the property is sold or developed. Without such a provision, the maximum 2% increase in taxable value would result in a decrease in revenue, in terms of real dollars, since inflation has significantly outpaced such a modest growth factor. Inclusion of this provision increased the value of county assessed property

<sup>10</sup> University of California, *Proposition 13, 10 Years Later: Finances, Local Control and the Common Good*, Summary of Proceedings of Public Issues Forum at 2 (1988).

during the 1987-88 to 1988-89 tax years 9.7% to \$1.2 trillion. *State Board of Equalization 1988-89 Annual Report* at 23.

Thus, each of Article XIII A's primary provisions, including that which provides for reassessment upon change of ownership, are not only rationally related, but are directly and substantially related to its goals of real property tax relief and of ensuring local governments with a reliable source of revenue.

**3. Article XIII A Provides Tax  
Limitations and Certainty for  
New Property Owners as Well as  
for Longtime Property Owners**

Where rights that are considered important, but not "constitutionally fundamental," are affected, this Court has imposed a higher level of scrutiny to economic legislation by viewing the challenged legislation from the perspective of the disadvantaged group. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432. Although petitioner considers new property owners in California to be the disadvantaged group vis-a-vis Article XIII A's distribution of tax burdens, even the petitioner must admit that Article XIII A bestows upon recent homeowners as well as longtime homeowners the undeniable benefits of knowing that their tax increases will be limited to 2% per annum. These limitations protect homeowners who are on permanently fixed or limited incomes from having their property taxed out from underneath them. Thus, the "disadvantages" of which the petitioner complains are more than offset by clearly discernible advantages.

**4. The Rationales for Article XIII A's Various Provisions Are Not Ad Hoc Justifications, but Were Articulated Both at the Time Proposition 13 Was Enacted, as Well as During the Instant Litigation**

As has been demonstrated above, Article XIII A's policies and purposes have been so clearly articulated and so well understood by the voters who enacted it that Article XIII A's defenders have not had to rely upon post hoc justifications for the system of property taxation Article XIII A imposes. When California's acquisition value basis of property taxation was first examined in *Amador*, the state Supreme Court found that Article XIII A's provisions formed an "interlocking 'package' . . . to assure effective real property tax relief." *Amador*, 22 Cal. 3d at 231. Since the *Amador* court's decision regarding the legitimacy of the purposes advanced by Article XIII A, there has been no reason to concoct additional purposes in order to justify Article XIII A's constitutional validity.

The fact that Article XIII A advances other legitimate state interests than those articulated in the ballot materials or in the litigation below<sup>11</sup> does not negate the fact

<sup>11</sup> Another plausible rationale for why a state might choose to appraise property based on its acquisition cost rather than its current market value is that

"[t]his practice arguably encourages all property owners, especially long term residents, to maintain their residences and improve the neighborhood. Such efforts will not be penalized by escalating appraisals. This policy may encourage community solidarity and cohesiveness as people build stakes

(Continued on following page)

that the important state interests of tax relief, tax certainty, and revenue stability are, themselves, sufficiently advanced by Article XIII A to warrant final affirmation of its constitutionality.

Application by this Court of a level of scrutiny that forecloses the consideration of any rationale that was not in the minds of those who enacted it, or in the minds of those charged with defending it before the courts, does absolutely no harm to Article XIII A.

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**CONCLUSION**

Petitioner has not demonstrated why this Court should overturn California's deliberately chosen method of taxing property. Unlike the situation which confronted this Court in *Allegheny Pittsburgh*, there is no dispute that acquisition value based taxation is the law of this state. Article XIII A not only reflects a tax system supported by legitimate policies, all citizens of this state have relied on Article XIII A for the last 13 years in making important business and personal decisions. A ruling in petitioner's favor would wreak havoc in California on both a state-wide and individual level.

Petitioner's characterization of Article XIII A as "irrational" completely avoids analysis under "rational basis" scrutiny and appears to be no more than a claim that if any perceived inequity arises from a state's tax system,

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in, loyalties to, and support for the community. In an increasingly mobile, transient society, a town may reasonably encourage stability." Glennon, *supra*, at 302.



such a system violates the Equal Protection Clause. Nowhere in the annals of Supreme Court jurisprudence has there ever been a hint that such a test would be adopted or even be workable. Such a test would destroy the principles of federalism and comity that have guided this Court in its deliberations over state actions and would be equally destructive of the "rational basis" standard of review.

Article XIII A is, in fact, more than "rationally based." Each of its provisions is substantially, if not directly, related to the legitimate state interests Article XIII A was designed to advance. For this reason, petitioner's equal protection challenge cannot prevail and this Court should affirm the decision of the California Court of Appeal.

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Respectfully submitted,

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